

**DMR ADVISORY COUNCIL MEETING**  
**November 19, 2003, 1:00 p.m.**  
**Minutes**

A meeting of the Department of Marine Resources' (DMR) Advisory Council (AC) was held on this date at the Department's West Boothbay Harbor Laboratory. Advisory Council members attending this meeting included **Blair Pyne (Chair), Rod Mitchell, David Pecci, Dana Temple, Bill Sutter, Kristan Porter, Dana Rice, Sr., Allyson Jordan and Elizabeth Sheehan**. Council members not present included **Steve Train, David Turner, Craig Pendleton, Al West, Lori Howell and Ralph Smith**. Department staff included Deputy Commissioner Lewis Flagg, Col. Joe Fessenden, Terry Stockwell, LT. David Mercier and L. Churchill. Other attendees included Barbara Kent and Dr. George Kidder and Joan Amory (Working Waterfront).

**1. Welcome**

Chair Blair Pyne called the meeting to order shortly after 1:00 pm.

**2. Approval of minutes** (Note: October 15<sup>th</sup> meeting was cancelled.) (See handout)

**Motion:** (B. Sutter, R. Mitchell) *Unanimous. Motion to approve the minutes of the meeting held September 17, 2003.*

**1. continued**

Bylaws discussion continued from the previous meeting (See handout)

Discussion points:

In reference to Bill Sutter's question on member's terms the Department staff reported that the statutory reference to the length of terms was determined to require no change. A "vacancy" is different from the regular expiration of one's term as a member. "Vacancy" is used in this context refers to an unanticipated event such as a term prematurely ending due to loss of the required license, resignation, death, etc. The Secretary of State's Office had this Council listed as having staggered terms. Research revealed that the terms have never been staggered since this Council's inception in 1977, therefore the member appointed on 7/15/03 (Temple/West/Mitchell) will all serve a full 3 year first term rather than the abbreviated terms that the Secretary of State's Office had originally indicated.

Bill Sutter requested that the short length of his first term serving out another's vacancy be reviewed. Bill Sutter requested discussion on Article II, Section 6, paragraph 1, Abstention, which in his opinion of Robert's Rules of Order the allowance for a member to abstain, if a member has a direct personal or pecuniary interest, is allowed if that interest is not common to "others" not to "other Advisory Council members" as drafted.

**Motion:** (B. Sutter, R. Mitchell) *Unanimous. Motion to approve the bylaws with one change to Article II, Section 6, paragraph 1, the words "other Advisory Council members" are replaced with "others".*

Select Nominating committee for officers in 2004

The Chair asked for three volunteers to nominate officers at the next meeting. The committee consists of Kristan Porter, Allyson Jordan and Blair Pyne.

**3. Regulations - Action (voting)**

Chapter 25.20 Protected Resources (major substantive - see handout)

T. Stockwell briefed the members on the rulemaking and answered questions about the location, consistency with the offshore fishing; joint enforcement; and Col. Fessenden described wet storage issues.

**Motion:** (K. Porter, E. Sheehan) *To accept as written.*

Discussion. None

**Motion continued:** *Unanimous. The Council voted to approve the major substantive rulemaking for Chapter 25.20 Protected Resources.*

Chapter 25.85 Lobster Trap Escape Vent Dimensions - Technical Correction and removal of citations to formerly repealed Chapters 25.91 and 25.92 (See handout)

T. Stockwell reviewed the rulemaking.

**Motion:** (D. Rice, R. Mitchell) To accept as written.

Discussion: None

**Motion continued:** Unanimous. The Council voted to approve the proposed rulemaking for Chapter 25.85 Lobster Trap Escape Vent Dimensions - Technical Correction and removal of citations to formerly repealed Chapters 25.91 and 25.92.

Chapter 11.10(B) Atlantic Sea Scallops, Minimum size - compliance and

Chapter 11.07(1)(a)(i)&(iii) Configuration of Drag - Technical corrections (See handout)

T. Stockwell reviewed the rulemaking.

Bill Sutter asked that the "per ring" requirements not to be struck, which in his opinion does not make sense regarding mesh attachment requirements or that the mesh has to be attached to rings. This item was postponed to allow Col. Fessenden to review this question with the Lieutenants and obtain a legal opinion for such change outside the rulemaking legal requirements and the substantive or non-substantive nature of the change.

#### 4. Special License

Barbara Kent and Dr. George Kidder gave a video and power point presentation on the Mount Desert Island Biological Laboratory research for their updated application for special license. (See handouts)

**Motion:** (E. Sheehan, R. Mitchell) To accept the request.

Discussion: None

**Motion continued:** Unanimous. The Council voted to approve the special license request.

#### 5. Other Business

Linda Mercer provided results of the subcommittee work and the Department's report on the annual review of the research plan. (See handout) Discussion. Bill Sutter said the plan falls short on economic development. Chair Blair Pyne offered to assist/review the draft letter to the Legislature.

#### 3. Regulations - Action (voting) continued

Chapter 11 continued

Bill Sutter asked that the paragraph in 11.07(1)(a)(iii) state that diamond meshes are not hanging more than 5 meshes per foot of mesh and not more than 2 meshes per foot of depth.

Col. Fessenden suggested that the paragraph could stand as written and suggested a future clause to allow drag designs or configurations as approved by permit from the Commissioner or to this affect. He indicated that Marine Patrol and Carl Wilson have handled a similar situation successfully in the offshore crab fishery. T. Stockwell suggested applying the term "or equivalent" to address the concerns.

Col. Fessenden also pointed out that due to the passage of a separate law with the same number as the authorizing law on the scallop shell size it was imperative that this section of regulations on the size be decided prior to the opening of the scallop season since the law can not be corrected until after the season it was intended to apply to.

Upon review the changes requested or suggested outside the legal comment period require further rulemaking. The one change that would be permitted is to apply no change at all to regulation 11.07(1)(a)(iii) as this would keep the status quo and not change any impact at this time.

**Motion:** (K. Porter, E. Sheehan) To accept Chapter 11.10(B) and Chapter 11.07(1)(a)(i) as written.

Discussion: None

**Motion continued:** Unanimous. The Council voted to approve the proposed rulemaking for Chapter 11.10(B) and Chapter 11.07(1)(a)(i). Proposed changes to Chapter 11.07(1)(A)(iii) are not adopted at this time. The Council requested that this paragraph be reviewed for further clarification through

*rulemaking due to the wording of the mesh attachments for dredges 3.5 feet or less in size, to clarify this section to meet the intent of the original rulemaking effective November 25, 2002 and amend the basis statement to reflect these changes.*

T. Stockwell emphasized the importance of following the rulemaking procedures that have been discussed at recent meetings. Questions, suggestions or concerns as written comments or attending the public hearings are all part of developing regulations and when done within the allotted time frame allows time for staff and legal types to review in a timely manner and incorporate adjustments or changes.

In response to Bill Sutter's concerns about how the Department spends the budget. L. Churchill pointed out the fiscal irresponsibility by not following the rulemaking procedures. The statutorily mandated legal public notice requirements for normal rulemaking by the Secretary of State's Office in the 5 major newspapers for proposed rulemakings runs about \$1,200 and if adopted the same notices must be published again at the same cost. Therefore, when the rulemaking procedures are not followed it may result in another \$2,400 legal expenditure that otherwise would be available for other budgetary items. This is why rulemakings are lumped together, to reduce publication costs and try to be fiscally responsible. When comments are received during the comment period or hearing they may be addressed through the summary of comments and basis statement, often not resulting in unnecessary rulemakings and costly expenditures.

## **5. Other Business**

- No meeting will be held in December.
- Due to the cancellation of the December meeting and proximity to the start of the new licensing year the 3 rulemaking items for new Chapter 8, Landings Program will be sent to members for their vote by ballot poll after the close of the comment period November 24, 2003.
- Starting in January meetings will be held at the Department of Human Services, Central Offices conference facility at 442 Civic Center Drive, Augusta.
- The pending rulemaking actions on the Swans Island trap regulations will be prepared for the January meeting.
- Four additional informational meetings will be held on the draft shellfish sanitation regulations. (See Handout) Rulemaking hearings are anticipated in early February.
- The Shrimp season has been set by emergency and proposed regular rulemaking. (See handouts)
- E. Sheehan provided handouts of a report regarding access and the working waterfront. (See handout) Contact Elizabeth if you have any questions.
- Bill Sutter requested that the Commissioner move forward in establishing the new scallop advisory council.
- Dep. Comm. Flagg announced that the next Governor's Groundfish Task Force meeting will be held Dec. 8<sup>th</sup> and is open to all. D. Pecci and E. Sheehan are Advisory Council members also serving on this task force. Dana Rice urged attendance to help with the issue as stocks return and how access will be managed.

**Motion:** (D. Rice, R. Mitchell) Unanimous. The Council voted to adjourn.